IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 784 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESHBHAI HIRALAL KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 784 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MC AC RAVAL, AGP for Respondent No. 1,3

RULE SERVED for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 25-12-2003. By the said order, the petitioner is detained as a "bootlegger" under P.A.S.A. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner under Bombay Prohibition Act. After considering the pending criminal cases and the statement of two secret witnesses aforesaid detention order was passed, which is under challenge in this petition.

2) Mr.Dave, learned advocate for the petitioner submitted that there is a delay in passing detention order, as from the last registered case against the petitioner, the detention order is passed after about one and a half month. He also submitted that the petitioner made a representation on 8th January, 2004 to the detaining authority but he was informed about the decision on 23rd January, 2004. He submitted that there is a delay in deciding the representation and, therefore, on that ground order of detention is required to be set aside, as it is a settled law that the representation is required to be dealt with immediately, unless there is appropriate explanation for delay in deciding such representation. In this behalf, the detaining authority has filed reply, wherein it is stated that the said representation was received by the detaining authority on 9th January, 2004 and on the same day, it was dispatched to the State Government. As per the communication received by the petitioner-detenu from the Section Officer of the Home Department, which is kept on record, the State Government has rejected said representation on 17th January, 2004. However, the State Government has not filed any reply pointing out as to on which date, it has received representation. In absence of such explanation, either by way of reply or even by keeping the file present, the delay in deciding representation of the detenu has remain unexplained. As there is no material explaining the delay in deciding the representation of the detenu, only on this limited ground, this petition is required to be allowed.

3) For the foregoing reasons, this petition is allowed. The order of detention dated 25-12-2003 is quashed and set aside. The detenu, Shri Kamleshbai Hiralal Kahar is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

/malek